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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,130	11/12/2003	Christopher Murray	50325-0818	8180
29989	7590	01/10/2008		
HICKMAN PALERMO TRUONG & BECKER, LLP			EXAMINER	
2055 GATEWAY PLACE			LUU, LE HIEN	
SUITE 550				
SAN JOSE, CA 95110			ART UNIT	PAPER NUMBER
			2141	
			MAIL DATE	DELIVERY MODE
			01/10/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/712,130	Applicant(s) MURRAY ET AL.	
	Examiner Le H. Luu	Art Unit 2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 24-26 and 30-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 24-26 and 30-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/05/07-10/24/07</u> . | 6) <input type="checkbox"/> Other: _____ |

1. Claims 1-15, 24-26, and 30-45 are presented for examination.
2. The amended title of the invention is still not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
3. The rejections of claim 24 under 35 U.S.C. § 101 have been withdrawn due to applicant's amendment filed on 10/24/2007.
4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-15, 24-26, and 30-45 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Higuchi et al. (Higuchi) Pub. No. 2002/0161891.
6. As to claim 1, Higuchi teaches the invention as claimed, including a method for adaptive load balancing comprising the steps of:
 - monitoring operating conditions of a server (page 3, paragraphs [0047-0050]; page 5, paragraph [0096]);
 - determining, based on the operating conditions, whether to send a behavior modification hint to one or more clients that are served by the server (page 3, paragraphs [0050-0053]);

generating the behavior modification hint based on the operating conditions; and sending the behavior modification hint to the one or more clients (page 3, paragraph [0058], page 6, paragraphs [0110 – 0111]);

wherein the behavior modification hint comprises a suggestion of two or more alternative servers (page 3, paragraph [0053]).

7. As to claims 2-3, Higuchi teaches the server is an AAA server and the one or more clients are AAA clients; the step of sending the behavior modification hint comprises sending a RADIUS message containing the behavior modification hint in a vendor specific attribute within the RADIUS message (page 2, paragraph [0041]; page 3, paragraph [0047 – 0048]).

8. As to claims 4-5, Higuchi teaches the step of sending the behavior modification hint comprises sending a particular message containing the behavior modification hint to a particular client of the one or more clients, where the particular message is a response message to a request message sent by the particular client to the server; the step of monitoring the server's operating conditions comprises monitoring at least one of CPU usage percentage, memory usage percentage, network conditions, and number of processes running (page 3, paragraphs [0050-0053]; page 6, paragraphs [0110 – 0111]).

9. As to claims 6-8, Higuchi teaches determining the one or more clients to which to send the behavior modification hint based on a predefined list of clients; determining the

one or more clients to which to send the behavior modification hint based on a network device group; determining the one or more clients to which to send the behavior modification hint based on operating conditions for the server relative to each of the one or more clients (page 3, paragraphs [0050-0053]; page 6, paragraphs [0110 – 0111]).

10. As to claims 9-10, Higuchi teaches the server is one of multiple servers providing a particular service; and the method further comprises the step of determining the two or more alternative servers based on operating conditions for each server of the two or more alternative servers; determining the two or more alternative servers further comprises the server obtaining the operating conditions of the two or more alternative servers over a network (page 2, paragraph [0034]; page 3, paragraphs [0048 – 0053]).

11. As to claim 11, Higuchi teaches determining when to send a behavior modification hint is based on network conditions of one or more networks providing communication between the server and the one or more clients, wherein the network conditions comprise at least one of: a ping time from the server to a computer on the one or more networks; a round trip time of a message sent to a particular client; a quality of service guaranteed to one or more clients; and operating conditions of a device on the one or more networks used to route messages (page 2, paragraph [0041]).

12. As to claim 12-15, Higuchi teaches sending a behavior modification hint further comprises the steps of: sending a code to the one or more clients; and generating the code based on why it was determined to send a message to the one or more clients; determining when to send a behavior modification hint is based on a scheduled event related to the server; wherein the scheduled event related to the server is selected from a group consisting of server shutdown, server maintenance, and server backup; determining when to send a behavior modification hint is based on a server detecting that a particular client has sent one or more retry messages, wherein a retry message is a second or subsequent message corresponding to a particular request for service from the particular client (page 3, paragraphs [0046 – 0053]).

13. Claims 24-26 and 30-45 have similar limitations as claims 1-15; therefore, they are rejected under the same rationale.

14. In the remarks, applicant argued in substance that

(A) Prior art does not teach monitoring operating conditions of a server.

As to point (A), Higuchi teaches using management server to monitor operating conditions of a lending server by having the lending server updates its lending registration information comprises lending conditions (page 3, paragraphs [0047-0050]; page 5, paragraph [0096]).

(B) Prior art does not teach behavior modification hint comprises a suggestion

of two or more alternative servers.

As to point (B), Higuchi teaches management server suggests lending servers 1a to 1n to client systems 20a to 20m. The client systems can borrow lendable logical partitions of lending servers 1a to 1n (page 3, paragraph [0053]).

15. Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). See also In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) ("During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.").

16. Limitations that are argued by applicant but are not in claimed language are not being considered by Examiner.

17. Applicant's arguments filed on 10/24/2007 have been fully considered but they are not deemed to be persuasive.

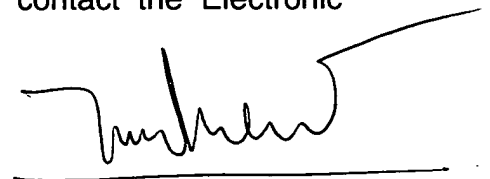
18. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Le H. Luu whose telephone number is 571-272-3884. The examiner can normally be reached on 7:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



LE HIEN LUU
PRIMARY EXAMINER